

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER PO-3819

Appeal PA16-562

University of Ontario Institute of Technology

February 27, 2018

Summary: The university received a 15-part request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) from a student for access to records relating to his complaints to the university, as well as other information. The university granted partial access to 16 records, with severances pursuant to sections 13(1) (advice or recommendations) and 21(1) (personal privacy). The university's decision to withhold information relating to other students and university employees is upheld based on the mandatory personal privacy exemption. The adjudicator finds that some information withheld pursuant to section 21(1) does not constitute "personal information" as defined in the *Act*, and orders it to be disclosed.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 21(1).

OVERVIEW:

[1] The University of Ontario Institute of Technology (the university) received a 15-part access request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) from a student for records relating to his complaints to the university, as well as other information. Some aspects of the university's decision were not appealed. This appeal only addresses the following portions of the requester's access request:

Graduating Students

"I was made aware... that students who had failed a course and were to graduate in the 2015/2016 set, had been accommodated to rewrite their exams in order to graduate".

4. All records relating to this accommodation.

September Capstone 2015/2016

6. Records of students that registered in 2015/2016 capstone that were missing more than one course from years 1-3 as stated in application.

Final Exams

11. Records of file history of the Exam Incident Reports .docx attachments contained in D106 and other previous email threads.

12. Records of communications with [named individuals] – timestamped -

[2] The university conducted a search and located 25 responsive records, nine of which were duplicates. The university granted the requester partial access to the 16 remaining records, with severances pursuant to the discretionary exemption in section 13(1) (advice or recommendations) and the mandatory exemption in section 21(1) (personal privacy) of the *Act*. The university also advised the requester that portions of the records were excluded from the jurisdiction of the *Act* under section 65(5.1)(b) (research exclusion).

[3] The requester appealed the university's decision, thereby becoming the appellant in this appeal. The appellant took issue with the information redacted from certain records, and claimed additional records should exist.

[4] During mediation, the university conducted a second search and disclosed additional records to the appellant after receiving clarification about the parameters of his request. As a result, the reasonableness of the university's search is no longer at issue in this appeal.

[5] Also during mediation, the appellant advised that he continues to take issue with the university's redactions to records D009, D010, and D016. The university maintained its position that portions of these records are exempt from disclosure under sections 13(1) and 21(1) of the *Act*.

[6] The appeal could not be resolved at mediation. The file was transferred to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry. The adjudicator began the inquiry by inviting the university's representations in response to the Notice of Inquiry.

[7] The adjudicator then invited the appellant to provide representations in response

to the Notice of Inquiry and the non-confidential portions of the university's representations, which were shared in accordance with *Practice Direction Number 7* of the IPC's *Code of Procedure*. The appellant provided written representations.

[8] The appeal file was then transferred to me to complete the inquiry. In the discussion that follows, I find that the first and last names, student identification numbers, educational histories, university employees' personal views or opinions about students that are not the appellant, and university employees' views or opinions are exempt under section 21(1). I also find that the subject codes, course numbers, course titles, and letter grades appearing in the records do not constitute "personal information" as defined in section 2(1) of the *Act*, and should therefore be disclosed.

[9] These findings cover all of the information withheld by the university. Based on the university's representations, the university claimed section 13(1) for information that I have found exempt under section 21(1), and therefore, I do not consider the university's application of section 13(1) to the information that I have ordered disclosed.

RECORDS:

[10] The information at issue is the portions withheld from Records D009, D010 and D016. These records are three email chains between university staff consisting of eight pages in total.

ISSUES:

- A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the mandatory exemption at section 21(1) apply to the information at issue?

DISCUSSION:

Issue A: Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[11] In order to determine which sections of the *Act* may apply, it is necessary to decide whether a record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

[12] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.¹

[13] To qualify as personal information, the information must be about the individual in a personal capacity. Generally, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.²

¹ Order 11.

² Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

Representations

[14] The university submits that the email chains at issue contain the names of a number of individuals other than the appellant, including individuals who are not employed by the university or acting in the course of their employment. Specifically, the university maintains that the emails include personal information as described in section 2(1) such as individuals' names, identifying numbers, information related to those individuals' education history, and the personal views or opinions of university employees about those individuals.

[15] The university submits that email records between university employees concerning third party information of the nature described has been found to constitute personal information by this office.

[16] The appellant advises that he is not interested in the personal information of other students; he simply wants to know whether his personal information has been redacted from the records disclosed to him. Specifically, he refers to the records that contain tables listing students, and indicates that he wants to know whether his name is listed in those tables.

Analysis and Findings

[17] Based on my review of the records, I am satisfied that the records only contain the personal information of other identifiable individuals as contemplated by the definition of that term in section 2(1) of the *Act*. I confirm for the appellant that the records at issue do not contain any of his personal information.

[18] Specifically, having considered the university's submissions, I find that the following information constitutes "personal information" pursuant to the definition in section 2(1):

- Record D009, page two: First and last names (paragraph (h)), student identification numbers (paragraph (c)), and education history (paragraph (b)) of five students that are not the appellant;
- Record D010: First and last name, student identification number, and education history of one student that is not the appellant, as well as a university employee's views or opinions about the student's academic performance (paragraph (g)); and
- Record D016: First and last names and student identification numbers of 12 students that are not the appellant, as well as information about some of those students' educational history.

[19] In addition, while the university has not raised the application of paragraph (e) of the definition of "personal information" in section 2(1) of the *Act*, I find that page

one of record D009 and page two of record D010 contain personal information as defined in that section. Both records contain the personal opinions or views of university employees, which constitutes those employees' personal information pursuant to paragraph (e).

[20] Upon review of the records at issue, I note an inconsistency in the information disclosed to the appellant. In records D010 and D016, the university has disclosed course names, subject codes, and course numbers to the appellant, but in record D0009, that information was withheld. I also note that the subject code and course number is not consistently redacted throughout record D0009. The subject code, course number, and course title are not, on their own, recorded information about an identifiable individual. To that end, disclosure of that information absent other identifying information will not result in disclosure of an individual's personal information. As only personal information can be exempt under section 21(1), I find this information does not qualify for exemption pursuant to that section. As the university has not claimed any other discretionary exemptions for this information and no other mandatory exemptions apply, I will order this information be disclosed to the appellant.

[21] In addition, I note that the university has redacted the letter grades that appear on page two of records D009 and D010. It is clear from the nature of the information contained in the partially disclosed records that each student whose personal information appears in a record failed the course discussed in that particular email chain. In these records, the letter grade on its own does not constitute recorded information about an identifiable individual. Therefore, the letter grades that appear on page two of records D009 and D010 are not "personal information" as defined by the *Act*. Again, as only personal information can be exempt from disclosure under section 21(1), and as the university has not claimed any other discretionary exemption for this information and no mandatory exemptions apply, I will also order this information be disclosed to the appellant.

[22] Given my finding that the records contain personal information of individuals other than the appellant, I will consider whether the information redacted from records D009, D010, and D016 is exempt from disclosure under section 21(1) of the *Act*.

Issue B: Does the mandatory exemption at section 21(1) apply to the information at issue?

[23] Under section 21(1), where a record contains personal information of another individual but not the requester, the institution is prohibited from disclosing that information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies.

[24] In the case before me, the three email chains do not contain the personal information of the appellant, but do contain the personal information of a number of other individuals. If the information fits within any of paragraphs (a) to (f) in section

21(1), it is not exempt from disclosure under section 21(1).

[25] I find that the information at issue in this appeal does not fit within any of paragraphs (a) to (e) of section 21(1) and the only exception that could apply is paragraph (f), which states:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

(f) if the disclosure does not constitute an unjustified invasion of personal privacy.

[26] Under section 21(1), if any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy. Once established, a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if either one of the provisions at section 21(4) or the public interest override at section 23 applies.³

[27] If the records are not covered by a presumption in section 21(3), section 21(2) lists various criteria that might be relevant in determining whether disclosure of the personal information would amount to an unjustified invasion of personal privacy. In such cases, the personal information will be exempt unless the circumstances favour disclosure.⁴

Representations

[28] The university submits that the requested information contains the personal information of other students and not the appellant. As a result, the university maintains that it is prohibited from disclosing that information to the appellant unless one of the exceptions in section 21(a) to (e) applies. The university maintains that none of the exceptions under sections 21(1)(a) to (e) apply to the records at issue.

[29] The university submits that the following presumption in section 21(3)(d) applies:

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

(d) relates to employment or educational history

[30] In support of this position, the university maintains that the redacted information

³ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div. Ct.).

⁴ Order P-239.

includes the names and other identifying information, including the educational history, identifying numbers, and personal opinions or views of university employees about identifiable individuals other than the appellant. The university maintains that disclosure of personal information relating to education history, including the other students' names, identification numbers, and university employees' views or opinions of those individuals, is presumed to be an unjustified invasion of personal privacy pursuant to section 21(3)(d), and therefore must be withheld under section 21(1).

[31] The university does not address the application of sections 21(2) or 21(4).

[32] The university's submissions on section 21 also do not address the portions of records D009 and D010 that I have determined contain personal information of university employees pursuant to paragraph (e) of section 2(1).

[33] The appellant did not provide representations on this issue.

Analysis and Findings

[34] Past orders of this office regarding the application of the presumption against disclosure in sections 21(3)(d) and 14(3)(d) (the municipal equivalent of section 21(3)(d)) have determined that for information to qualify as "employment or educational history", it must contain some significant part of the history of the person's employment or education. What is or is not significant must be determined based on the facts of each case.⁵

[35] Based on my review of the university's submissions and the records at issue, I am satisfied that much of the personal information that remains at issue relates to the education history of the students named in the records. This information identifies the students as having enrolled in a course, and reveals information about their academic performance in that course. In particular, the information reveals that the named students failed a course and may or may not have been afforded an opportunity to sit a re-examination so as to allow them to graduate on time. I find that this information is "significant" enough to constitute "educational history" for the purpose of section 21(3)(d). Accordingly, disclosure of the personal information contained in the records would constitute an unjustified invasion of the students' personal privacy pursuant to the presumption in section 21(3)(d).

[36] As noted above, neither party addressed the application of section 2(1)(e) to certain portions of records D009 and D010; however, I have determined that both records contain the views or opinions of university employees, which qualify as the personal information of those employees pursuant to that section.

⁵ Order MO-1343, M-609.

[37] The parties did not provide representations about whether any of the presumptions in section 21(3), factors in section 21(2), or exceptions in section 21(4) apply to that information. I find that none of the presumptions in paragraphs (a) through (h) of section 21(3) apply, nor do the factors in section 21(2) favouring disclosure. I also find that none of the exceptions in section 21(4) apply. Accordingly, I find that the exception in section 21(f) is not established and the mandatory section 21(1) exemption applies to the university employees' personal information contained in records D009 and D010.

[38] In sum, I find that the following information is exempt from disclosure under the mandatory personal privacy exemption in section 21(1) of the *Act*:

- Record D009, page 1: Personal views or opinions of a university employee;
- Record D009, page 2: First and last names of five students, five student identification numbers, and the education histories of five students;
- Record D010, page 2: First and last name of one student, student identification number, a university employee's views or opinions regarding the student's academic performance; and the personal views or opinions of a university employee;
- Record D016, page 1: First and last names of eleven students and eleven student identification numbers; and
- Record D016, page 2: First names of three students, last name of one student, one student identification number, and the students' education histories.

Summary

[39] My findings up until now address all of the information that has been withheld by the university in the three records at issue.

[40] I will order disclosure of the subject codes, course numbers, and course titles in record D009, as well as the letter grades appearing in records D009 and D010. This information was redacted by the university pursuant to section 21(1) of the *Act*, but I have found that it does not constitute "personal information" as defined in that section.

[41] I have upheld the remainder of the university's redactions to records D009, D010, and D016 pursuant to the mandatory personal privacy exemption in section 21(1).

[42] The information in records D009 and D010 that was withheld by the university pursuant to section 13(1) is redacted pursuant to the mandatory personal privacy exemption in section 21(1). As such, it is not necessary for me to consider the university's application of section 13(1) to that information in records D009 and D010.

ORDER:

1. I order the university to disclose the subject codes, course numbers, and course titles in record D009, as well as the letter grades appearing in records D009 and D010 by **April 5, 2018** but not before **March 29, 2018**.
2. I uphold the university's decision to withhold the remainder of the information at issue.
3. I reserve the right to require the university to provide me with a copy of the records disclosed to the appellant, in order to verify compliance with order provision 1.

Original Signed by: _____

Jaime Cardy
Adjudicator

February 27, 2018 _____